

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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4 FEI FEI FAN,

5 Plaintiffs,

6 v.

7 YAN YAO JIANG, *et al.*,

8 Defendants.

Case No. 3:21-CV-00458-RCJ-CLB

**ORDER AWARDING ATTORNEY'S FEES
AND COSTS PURSUANT TO COURT'S
ORDER GRANTING SANCTIONS
AGAINST PLAINTIFFS (ECF No. 52)**

[ECF No. 57]

On January 13, 2023, this Court considered Defendants Yan Yao Jiang ("Jiang") and Wei Wu's ("Wu") (collectively referred as to "Defendants") motion to compel against Plaintiff Fei Fei Fan ("Fan"). (ECF No. 40.) The Court granted the motion, awarded Defendants their reasonable attorney's fees and costs as sanctions for the cost associated with bringing the motion to compel, and directed Defendants' counsel to submit a memorandum of attorneys' fees and costs. (ECF No. 52.)

Defendants' counsel timely filed their memorandum in support of Defendants' request for attorney's fees and costs. (ECF Nos. 57, 59.) Fan responded, (ECF No. 65), and Defendants replied, (ECF No. 66).

The Court now considers Defendants' memorandum of attorney's fees and costs. (ECF No. 57.) Defendants seek a total of \$16,849.50 in fees and costs.

I. DISCUSSION

Defendants are the prevailing party to the extent that the Court determined that sanctions were warranted against Plaintiffs for their failure to comply with a discovery order. The Court concluded that an award of attorney's fees and costs was proper under the circumstances, and it must now calculate a reasonable fee award.

The lodestar method is the customary method that the Court uses when determining attorneys' fees. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party

1 reasonably expended on the litigation by a reasonable hourly rate." *Id.*; see also *McGrath*
 2 *v. County of Nevada*, 67 F.3d 248, 252 (9th Cir. 1995). The requesting party "has the
 3 burden of submitting billing records to establish that the number of hours it has requested
 4 are reasonable." *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202 (9th Cir. 2013). The
 5 Court should exclude from the lodestar calculation hours that were not "reasonably
 6 expended," including hours that are "excessive, redundant, or otherwise unnecessary."
 7 *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983); see also *Ballen v. City of Redmond*, 466
 8 F.3d 736, 746 (9th Cir. 2006). If the Court determines some requested fees should be
 9 excluded as unreasonable, the Court may exclude bill entries pursuant to an hour-by-
 10 hour analysis. *Gonzalez*, 729 F.3d at 1203.

11 The lodestar amount is a presumptively reasonable fee. *Camacho v. Bridgeport*
 12 *Financial, Inc.*, 523 F.3d 973, 982 (9th Cir. 2008). Although presumptively reasonable,
 13 the Court may adjust the lodestar amount based on the *Kerr* factors to account for factors
 14 that have not been subsumed in the lodestar calculation. *Id.* The *Kerr* factors include: (1)
 15 the time and labor required, (2) the novelty and the difficulty of the questions involved, (3)
 16 the skill required to perform the legal service properly, (4) the preclusion of other
 17 employment by the attorney due to the acceptance of the case, (5) the customary fee, (6)
 18 whether the fee is fixed or contingent, (7) time limitations imposed by the client or
 19 circumstances, (8) the amount involved and the results obtained, (9) the experience,
 20 reputation, and ability of the attorney, (10) the "undesirability" of the case, (11) the nature
 21 and length of the professional relationship with the client, and, (12) awards in similar
 22 cases. *Kerr v. Screen Extras Guild, Inc.*, 525 F.2d 67, 70 (9th Cir. 1975). "The number of
 23 hours to be compensated is calculated by considering whether, in light of the
 24 circumstances, the time could reasonably have been billed to a private client." *Moreno v.*
 25 *City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008).

26 Furthermore, Local Rule 54-14(b) requires a party seeking attorneys' fees to
 27 include (1) a reasonable itemization and description of the work performed and (2) an
 28 itemization of all costs sought to be charged as part of the fee award.

1 **A. Reasonable Hourly Rate**

2 “The ‘prevailing market rates in the relevant legal community’ set
 3 the reasonable hourly rate for purposes of computing the lodestar amount.” *Gonzalez v.*
 4 *City of Maywood*, 729 F.3d 1196, 1205 (9th Cir. 2013). “Within this geographic
 5 community, the district court should ‘take into consideration the experience, skill, and
 6 reputation of the attorney or paralegal.’” *Id.* (internal quotation marks omitted). “Generally,
 7 when determining a reasonable hourly rate, the relevant community is the forum in which
 8 the district court sits.” *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 454 (9th Cir.
 9 2010) (internal quotation marks omitted).

10 It is customary for attorneys to bill an hourly rate for legal services provided, and
 11 counsel Ms. O’Mara attests that her hourly rate is \$475, and Mr. Schaerer attests that his
 12 hourly rate is \$400. The Court, through its own familiarity with the rates in the unofficial
 13 northern division of the District of Nevada, finds the requested hourly rates to be
 14 reasonable. Rates of \$450-\$500 per hour have been recently approved for attorneys with
 15 13-21 years of experience; *Newmark Group, Inc. v. Avison Young*, No. 2:15-cv-00531-
 16 RFB-EJY, 2022 WL 990640 (D. Nev. Apr. 1, 2022); *Buck v. Lakeview Mediation*
 17 *Solutions*, No. 2:20-cv-00189-GMN-BNW, 2021 WL 5176472, at *6 (D. Nev. Oct. 19,
 18 2021); *McGuire v. Allegro Acceptance Corp.*, No. 2:18-cv-01635-MMD-VCF, 2020 WL
 19 3432533, at *4 (D. Nev. June 22, 2020).

20 **B. Hours Reasonably Expended**

21 The Court next considers the hours expended on the tasks outlined in Ms.
 22 O’Mara and Mr. Schaerer’s declarations. The party seeking an award of fees must submit
 23 evidence supporting the hours worked. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).
 24 “Where the documentation of hours is inadequate, the district court may reduce the award
 25 accordingly.” *Id.* The Court should exclude from the initial fee calculation hours that are
 26 not reasonably expended. *Id.* at 433-34. The Court may exclude hours that are not
 27 reasonable due to overstaffing, duplication of effort, excessiveness, and otherwise
 28 unnecessary to the issue. *Id.* at 434. In other words, the Court has discretion to “trim fat”

1 from, or otherwise reduce, the number of hours claimed to have been spent on the case.
 2 *Edwards v. Nat'l Business Factors, Inc.*, 897 F.Supp 458, 460 (D. Nev. 1995) (quotation
 3 omitted); *see also Gates v. Deukmejian*, 987 F.2d 1392, 1399 (9th Cir. 1992).

4 Mr. Schaefer provides the dates that the attorneys provided legal services in
 5 connection with the motion to compel, a summary of work performed for each entry, and
 6 the time spent on each task. (ECF No. 52-1.) Defendants' report spending 40.45 hours in
 7 relation to the motion to compel and assert they are entitled to \$16,849.50. (ECF No. 57.)
 8 Defendants' billing records are heavily redacted making it very difficult for the Court to
 9 discern what work was actually performed on the motion to compel. The Court does not
 10 find it appropriate to include fees related to mandatory meet and confers prior to the filing
 11 of the motion. Instead, the Court excludes those entries that it finds to be unnecessary
 12 and unrelated to the motion to compel as they are outside the timeframe of when the
 13 motion was filed and fully briefed. The Court agrees with Fan's response that the
 14 appropriate timeframe includes only those entries from October 21, 2022 to November
 15 14, 2022. The billing records reflect Ms. O'Mara spent 3.1 hours during the timeframe of
 16 October 21, 2022 to November 14, 2022 and Mr. Schaefer spent 10.3 hours during the
 17 timeframe of October 21, 2022 to November 14, 2022—for a total of 13.4 hours.

18 Based on the Court's experience, the Court finds 13.4 hours spent on the motion
 19 to compel to be reasonable in amount. Thus, based on this Court's determination of
 20 reasonable hourly rates and hours reasonably expended, the following fee computation
 21 applies:

Attorney	Hours		Hourly Rate	Total
O'Mara	3.1	x	475	\$1,475.50
Schaefer	10.3	x	400	\$4,120.00
				\$5,592.50

26 **C. Kerr/LR 54-14 Factors**

27 Having considered the hourly rate and the legal services itemized in Mr. Schaefer's
 28 declaration, the Court must decide whether to increase or reduce the lodestar amount

1 based upon the *Kerr* factors not already included in the initial lodestar calculation. *Fischer*,
2 214 F.3d 1115, 1119. The *Kerr* factors are also incorporated into Local Rule 54-14. The
3 Court has considered all the relevant factors and finds that no other *Kerr* factors warrant
4 enhancement or reduction of the fees. Therefore, based on the discussion above,
5 Defendants are entitled to recover \$5,592.50 in attorney's fees.

D. Costs

7 While not entirely clear, it appears Defendants request reimbursement of \$1 in
8 costs associated with accessing PACER. (ECF No. 57 at 6.) Nontaxable costs are
9 recoverable on a motion to the Court. Fed. R. Civ. P. 54(d)(2) (“claim for... related
10 nontaxable costs must be made by motion”); see also LR 54-6(b)(2) (costs and page fees
11 for electronic access to court records are nontaxable). The Court finds this cost
12 reasonable and reimbursable.

13 || II. CONCLUSION

14 **IT IS ORDERED** that Defendants are awarded the sum of **\$5,592.50** in attorney's
15 fees and **\$1.00** in costs for a total of **\$5,593.50** payable to Defendants' counsel within **60**
16 **days** of the date of this order.

IT IS SO ORDERED.

18 | DATED: February 23, 2023


UNITED STATES MAGISTRATE JUDGE